LEILA DULCIE ALLANA LABROOY @ MISS LEILA DULCIE ALLANAH LABROOY & 9 ORS.

v.

MAJLIS BANDARAYA IPOH & ANOR.

HIGH COURT MALAYA, IPOH
TUAN CHIN FOOK YEN JC
[CIVIL SUIT NO. 22-32-95]
22 SEPTEMBER 1995

LOCAL AUTHORITY: *Development of land - Notice - Town and Country Planning Act 1976, s. 21(6) - Whether land located in an area in respect of which no development plan exists - Whether s. 21(6) applicable.*

The second defendant, a housing development company and the owner of 4 lots of adjoining land (the said lots), had applied to and obtained from the 1st defendant planning permission to develop the said lots into shop houses. The plaintiffs were the owners of adjoining land within the vicinity of the said lots.

It was contended by the plaintiffs that the first defendant had failed to give them notice to be heard pursuant to s. 21(6) of the Town and Country Planning Act 1976, which was a statutory duty to be complied with by the first defendant. It was further contended by the plaintiffs that because of the first defendant's failure to give notice, the approval was bad in law and null and void.

The issue before the Court was whether the said lots were located in an area in respect of which no development plan exists. Both Counsels conceded that if the said lots were within an area in respect of which no development plan existed, the plaintiffs, subject to having *locus standi*, should be entitled to notice as provided in s. 21(6).

Held:

[1] Basing on the notification by Jawantankuasa Perancang Negeri Perak, admitted as evidence, and by virtue of s. 10(6) of the Town and Country Planning Act 1976 which provides that "upon assent being given, the plan shall come into effect", the Court takes judicial notice of the notification and in the event holds that the said lots are within the development plan within the meaning of s. 21(6). The provisions as regards notice to owners of adjoining lands under s. 21(6) are therefore not applicable and the issue of *locus standi* does not arise.

[2] The lots are in the area in respect of which development plan exists. As such the requirement of notice under s. 21(6) is not applicable.

[Claim dismissed with costs].

Cases referred to:
Pyx Granite Co. v. Ministry of Housing and Local Government [1960] AC 260 ***(refd)***
MacPail & Co. Ltd. v. Harper Gilfillan & Co. Ltd. [1937] MLJ Rep. 91 ***(refd)***
Datin Azizah bte Abdul Ghani v. Dewan Bandaraya K.L. & Ors. [1992] 2 MLJ 393 ***(refd)***

Legislation referred to:
City of Kuala Lumpur (Planning) Act, 1973
Federal Territory (Planning) Act 1982, s. 64
Interpretation Acts 1948 and 1967, s. 119

Perak Planning Control (General) Rules 1991, r. 7
Supreme Court Rules 1970, rr. 5, 6
Town And Country Planning Act, 1976 s. 2, 10(6), 21(6), 22(2), 58

For the plaintiff - M/s. Bachan & Kartar
For the 1st defendant - M/s. Kean Chye & Sivalingam
For the 2nd defendant - M/s. Raj Selva & Co.

JUDGMENT

Chin Fook Yen JC:

One day after the filing of this suit, the plaintiffs applied *ex-parte* for interim injunction to restrain the lst defendant, *inter alia*, from re-zoning the lots concerned and to restrain the 2nd defendant, *inter-alia*, from carrying on construction on the said lots. In holding, as I did, that there was no urgency in the matter, I directed the application to be heard *inter-parte*. In the meantime, various affidavits were filed by all the parties and their witnesses. As the facts disclosed in the various affidavits were not seriously in dispute, Counsel for all the parties by consent agreed: (a) to abandon the injunction application and (b) not to call oral evidence but to submit on the case proper on the affidavit evidence and also agreed, to allow any party to adduce further affidavit evidence as and when necessary in the course of their submissions subject to the right to reply, if any. The 1st and 3rd plaintiffs later in the proceedings informed the Court that they did not wish to continue with the proceedings and having made an order as to costs in respect of them, the proceedings continued thereafter with the rest of the plaintiffs.

The facts in this case are substantially as follows. The 2nd defendant, a housing-development company as owners of 4 lots of land (said lots) with all of them adjoining one another had applied to the 1st defendant, a local authority concerned for planning permission to develop the said lots into shop-houses. Except for plaintiff no. 2 whose land was back-to-back with one of the said lots, and plaintiff no. 10 who was at all material times, a tenant, all the other plaintiffs were owners of lands within the vicinity of the said lots. All of them without any exception claimed to be owners of lands adjoining the said lots, within the meaning of s. 21(6) of the Town And Country Planning Act, 1976 (TCP Act).

It is common ground that prior to October 1994, the 2nd defendant as owners of only 3 lots then (before acquiring the intermediate lot) had made a similar application, when some of the plaintiffs as such owners who had been given notice by the 1st defendant apparently under s. 21(6) of the TPC Act, had objected to the application. The application was rejected due to the objection solely raised by the owners of the intermediate lot and not for reasons of the other objectors, according to the 1st defendant. The strategic position of the intermediate lot was too obvious. Subsequently sometime in October 1994 the 2nd defendant bought over the intermediate lot for what I was told from the Bar the purchase price of RM1 million. Accordingly with the purchase of the intermediate lot, the 2nd defendant had overcome the obstacle, having this time the 4 lots continuously one adjoining another. This time, the lst defendant approved the 2nd defendant's application, upon the application being submitted through a letter dated 15 November 1994 from the Land Office, Ipoh. The letter was worded thus:

Pejabat Daerah dan Tanah
30000 Ipoh
Perak Darul Ridzuan

Tarikh: 15 November 1994.

Yang Berbahagia,
Datuk Bandar,
Majlis Bandaraya,
Ipoh.

Datuk,

Permohonan untuk pecah sempadan tanah bagi hakmilik-hakmilik CT 9194 lot. 30103, CT 9189 lot. 30098, Geran 10353 lot 3029N Bandar Ipoh.

Saya dengan hormatnya memaklumkan bahawa permohonan-permohonan seperti yang tersebut di atas telah ditolak oleh pihak Datuk mengikut surat bil.(25) dlm. MBI.179/2/670 bertarikh 23 Julai 1994.

2. Walaubagaimanapun pemohon telah mengemukakan semula permohonan yang sama bagi lot-lot yang berkaitan termasuk satu permohonan baru iaitu lot 3027N CT 24123, Bandar Ipoh, pada 24 Oktober 1994.

3. Oleh itu bersama-sama ini dikemukakan dokumen-dokumen berikut bagi lot-lot terlibat untuk pertimbangan Datuk:

i. Borang 9A - 5 salinan setiap lot.

ii. Pelan cadangan - 2 salinan setiap lot.

4. Bersama-sama ini juga dikepilkan satu salinan surat bantahan yang diterima oleh pejabat ini daripada penduduk-penduduk di sekitar kawasan tersebut yang dialamatkan kepada Datuk yang membantah akan cadangan permohonan ini.

Sekianlah dimaklumkan, adanya.

Berkhidmat Untuk Negara

Saya yang menurut perintah,

T.t.

(Ahmad Zainuddin bin Yeop Shamsudin)
b.p. Pentadbir Tanah,
Kinta, Ipoh.

s.k. Fail PTK(I) 6/46/94, 6/48/94 dan 6/49/94

There were occasions in the choice of words used in the affidavits giving rise to confusion as to whether it was a fresh application or an appeal. From the wordings of this letter dated 5 November 1994, more particularly para. 2 thereof, there was no room for doubt or ambiguity that that was, and I so hold, a fresh application, as the word - rayuan - was not used anywhere in the letter.

Another target of attack was whether the proper format had been used in the instant application. The Court does not concern itself with the formats used in the office of the 1st defendant in the day-to-day administration, in view of the claim by the plaintiffs for declaration of their right to be heard. That brings us to the next point. At the outset Counsel for both the defendants contended, some-what half heartedly, that the plaintiffs' claim for declarations was wrong in the case and that *certiorari* would be the more appropriate remedy. This point was commented in *Pyx Granite Co. v. Ministry of Housing and Local Government* [1960] AC 260 where Lord Goddard said at page 290:

> I know of no authority for saying that if an order or decision can be attacked by *certiorari* the Court is debarred from granting a declaration in an appropriate case. The remedies are not mutually exclusive, though no doubt there are some orders, notably convictions before justices, where the only appropriate remedy is *certiorari*.

The claim was that the 1st defendant had failed to give them notice to be present and to raise objection, if any, at the hearing of the application; a statutory duty to be complied with by the 1st defendant and a right to be heard to which the plaintiffs were entitled under s. 21(6) of the TCP Act. They sought to be determined their right to be heard. I find the claim for declaration was essential to the cause of action and I therefore hold the statement of claim showed a special reason why a declaration was sought. (see *MacPail & Co. Ltd. v. Harper Gilfillan & Co. Ltd.* [1937] MLJ Rep. 91)

It is also common ground that in so far as the application was concerned, none of the plaintiffs was given notice to be heard, for which failure the plaintiffs strongly contended the approval by the 1st defendant was "bad in law and null and void." As the back-bone of their argument, the plaintiffs relied on s. 21(6) of the TCP Act which reads:

> If the proposed development is located in an area in respect of which no development plan exists for the time being, then, upon receipt of an application for planning permission, or, where directions have been given under subsection (3), upon compliance with the directions, the local planning authority shall, by notice in writing served on them, inform the owners of the lands adjoining the land to which the application relates of their right to object to the application and to state their grounds of objection within twenty-one days of the date of service of the notice.

The plaintiffs also relied on the fact that at the earlier application they were given notice thereof pursuant to the section. The 1st defendant conceded this, but it was a mistake made in good faith. The crux of the dispute between the plaintiffs and the defendants as disclosed in the affidavit evidence was whether the said lots were "located in an area in respect of which no development plan exists" as provided under s. 21(6) of the TCP Act and as for the meaning of "development plan" it is defined in s. 2 of the same Act as:

> (a) the local plan for the area; or
>
> (b) if there is no local plan for the area, the structure plan for the area.

To begin with, both Counsel conceded that if the said lots were within an area in respect of which no development plan existed, the plaintiffs, subject to having *locus standi*, should be entitled to notice as provided in s. 21(6). The 1st defendant undertook the onus of proof and produced:

> (a) as exhibit "AA-1":
>
> Local Government Act, 1976
>
> Notification Under Section 3
>
> Corrigendum
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> PK. P.U. No. 92 of 1979 published on 27 December, 1979 is hereby cancelled and substituted with the following:
>
> "In exercise of the powers conferred by section 3 of the Local Government Act, 1976, the State Authority, Perak, in consultation with the Minister of Housing and Local Government and the Secretary of the Election Commission, hereby declares that with effect from the 1st day of January, 1980, the area specified in the Schedule hereunder to be a Local Authority area known as the Ipoh Municipal Council and determines that the status of such Local Authority shall be that of a Municipal Council.
>
> Schedule
>
> The area covering approximately 53 square miles (34,001 acres) in the District of Kinta as shown in grey on P.W.579 kept in the office of the Director of Survey, Perak.

Dated this 6th day of April, 1981.
[P.S.U.K. Pk.(KT)21080; MPI.70/4/187.]

Husain bin Haji Anjang Pulau
Clerk
State Executive Council, Perak

In the affidavit of Azizuddin bin Alias, sebagai Pegawai Perancang Bandar untuk Majlis Bandaraya Ipoh (encl. 35) dated 10 July 1995 he affirmed to in:

Para 2: Saya telah diminta untuk memberi penerangan samada lot-lot yang berikut iaitu:

(a) 30098

(b) 30103

(c) 3027N

(d) 3029N

dan lot-lot pembantah/plaintif dalam kes ini berada didalam dan terlibat dengan rancangan struktur Ipoh (Jalan Labrooy/Jalan Manjoi).

Para 3: Saya disini mengesahkan bahawa kesemua lot-lot yang disebutkan di para 2 diatas adalah dalam rancangan struktur Ipoh yang mana telah diluluskan (assent) dan diwartakan.

Para 4: Saya juga mengesahkan bahawa rancangan struktur Ipoh merangkumi keseluruhan kawasan pentadbiran Majlis Bandaraya Ipoh. Kawasan pentadbiran Majlis Bandaraya Ipoh telah pun diwartakan sebagai Pk PU 13/81. Sesalinan warta dan pelan warta PW579 yang menunjukkan kawasan pentadbiran Bandaraya Ipoh dikepilkan bersama-sama dan ditanda sebagai ekshibit 'AA-1'.

Para 5: Saya juga dengan ini mengepilkan satu salinan pelan 'topo sheet' No. 618 yang dikeluarkan oleh Jabatan Ukur Perak. Saya juga mengesahkan bahawa topo sheet' tersebut berdasarkan pelan kawasan pentadbiran Bandaraya Ipoh. 'Topo sheet' ini menunjukkan lot-lot yang terlibat seperti yang telah diwarnakan. Sesalinan 'topo sheet' tersebut dikepilkan disini dan ditanda sebagai 'AA-2'

In exhibit "AA-2" I have occasion to observe that the said lots and the plaintiffs' lands are within the entire area (high-lighted) of the structure plan within the meaning of s. 2 of the TCP Act.

(b) Exhibit "AJ-1":

Warta Kerajaan Negeri Perak

[18 Julai 1991]

Town and Country Planning Act 1976
(Act 172)

No. 985.

Notification Under Section 10(7)

It is notified that at the meeting held on 15 May 1991 assent was given by the State Authority to a draft structure plan of the Ipoh City Council. The said plan is marked as the Ipoh Structure Plan P.S.N.P. 1/91 and may be inspected at the office of the Ipoh City Council during office hours.

Bertarikh pada 27hb. Jun 1991.

[JPBD AS/50(9); PSUK Pk. (KT-AM)20860 Jld. 2; PU. Pk. 81/70]

Tan Sri Dato' Seri Ramli Bin Ngah Talib
Pengerusi,
Jawatankuasa Perancang Negeri Perak

The notifications aforesaid, shall be admitted in evidence, by virtue of s. 119 of the Interpretation Acts 1948 and 1967. Basing on the aforesaid and by virtue of s. 10(6) of the TCP Act which provides that "upon assent being given, the plan shall come into effect", I take judicial notice of the notifications and in the event I hold that the said lots are within the development plan within the meaning of s. 21(6). The provisions as regards notice to owners of adjoining lands under s. 21(6) are therefore not applicable and the issue of *locus standi* does not arise.

Counsel for the plaintiffs further submitted that the 1st defendant under the provision of s. 22(2) of the TCP Act was required to notify the adjoining land owners i.e., the plaintiffs and to hear their objection, if any. And he relied heavily on *Datin Azizah bte Abdul Ghani v. Dewan Bandaraya K.L. & Ors.* [1992] 2 MLJ 393. In that case Datuk Bandar Kuala Lumpur granted planning permission under the Federal Territory (Planning) Act 1982 (FTP Act) with no notice given to the appellant. The old rules made under the repealed Ordinance No. 46 of 1970 and the City of Kuala Lumpur (Planning) Act, 1973, required the Datuk Bandar to notify the adjoining land owners and hear their objections. But the FTP Act being silent on the point, required him to consider matters pertaining to proper planning. The procedure for the performance of his statutory duty was to be provided for by the rules to be made under s. 64 of the FTP Act and that was not made at the material times. The Supreme Court held that since the old rr. 5 and 6 of the 1970 Rules were not in conflict or inconsistent with the FTP Act, they applied and the Datuk Bandar had to comply with them.

In the present case, the Court is concerned with the TCP Act, more particularly s. 21(6) which is completely absent in the FTP Act. Moreover, unlike the case of *Datin Azizah (supra)* where at the material times no rules were made under s. 64 of the FTP Act, pursuant to s. 58 of the TCP Act, rules were made and under r. 7 of the Perak Planning Control (General) Rules 1991, Notice is required to be given to adjoining land owners under s. 21(6) of the TCP Act.

I find the two legislations i.e., FTP Act and TCP Act are not in *pari materia* and the Court is not dealing with parallel legislations. The present case requires consideration separately.

First, my finding is that the said lots are in an area in respect of which development plan exists. As such the requirement of Notice under s. 21(6) is not applicable. In considering s. 22(2) of the TCP Act, my opinion is that if the said lots were in an area with no development plan existing, then apart from having to consider those matters pertaining to proper planning referred to in the provisions of s. 22(2), the 1st defendant was required to notify and hear the plaintiffs. This view is in consonant with s. 21(6). Where the said lots are in an area with development plan existing, which is the case here, then in my view the 1st defendant is not required to notify the plaintiffs and hear their objections, though obviously the 1st defendant would still be required to give consideration to those matters pertaining to proper planning, for to hold otherwise would make the entire provisions of s. 21(6) superfluous. Accordingly the claim against the 2nd defendant must also fail.

For the above reasons, the claim of the plaintiffs is dismissed with costs.